

**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

296-1291
Contact Phone Number

28-65-1, 28-65-2, 28-65-3, 28-65-4
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

K.A.R. 28-65-1 through 28-65-4 are the Kansas Emergency and Right-to-Know regulations that facilitate public knowledge of and access to information on the presence of hazardous and toxic chemicals in their communities; and support planning for emergency response and management. These regulations protect communities and local emergency personnel responding to fires and other disasters. These rules also cover what trade secrets do not have to be revealed through the Right-to-Know program and how corporations can claim them.

Updates to these regulations enhance protection of the public from undue harm in case of an incident and at minimal cost to the regulated facilities. Most notably, the special reporting considerations for petroleum fuel facilities has been removed to align with the federal higher reporting thresholds. There are no changes in the fee structure.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)*

The update will allow Kansas to remain compatible with current federal regulations. The federal "Emergency Planning and Community Right-to-Know Act" (EPCRA), 42 U.S.C. § 11001 et seq., was adopted by Congress in 1986. EPCRA Section 312 (42 U.S.C. § 11022) requires regulated facilities to submit a report of their emergency and hazardous chemical inventory to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and the local fire department annually.

States are required to:

- Establish procedures for receiving and processing public requests for information collected under EPCRA
- Review local emergency response plans
- Designate local emergency planning districts
- Appoint a Local Emergency Planning Committees (LEPC) for each district
- Supervise the activities of the LEPC



- In guidance issued on July 13, 2010, the U.S. Environmental Protection Agency (EPA) provided the following interpretation of its Tier II reporting regulations under EPCRA:

States have the flexibility to use any system for collecting chemical inventory information under section 312 and to establish the means to ensure the information is true, accurate, and complete so they may effectively and efficiently manage chemical risks and provide information to the public. (75 FR 39852, at 39856, July 13, 2010.)

Most states, including Kansas, charge a fee per facility or owner/operator for certain sectors of industry and then a separate per-chemical fee for everybody else. Fees are often higher for chemicals listed in EPCRA as “extremely hazardous substances.” Colorado charges \$10 / facility and \$10 / chemical reported, or \$25 / chemical for extremely hazardous substances. Fees are capped at \$1,000. They adopted right-to-know regulations in Colorado Revised Statutes § §24-33.5-1501 et seq. Colorado also requires submission via the Internet, with few exceptions. Inconvenience alone is not acceptable. Oklahoma uses a similar fee structure, but charges \$15 / chemical and \$30 / extremely hazardous substance, with exceptions for oil and natural gas production facilities and agriculture chemical dealerships. Those are charged at \$12 / facility.

Missouri allows petroleum producers to subtract federal hazardous chemical transportation fees from their filing fees and combine all petroleum substances into a single “hazardous chemical” for payment reasons. Missouri has a \$10,000 cap on their total fees.

Table 1. Fee Comparison for Right-to-Know Programs in Neighboring States

	Per chemical	Per facility	Per extremely hazardous substance	Fee cap	Is manual submission allowed?
Missouri	\$100 for the first three, \$20 per thereafter	\$50 (petroleum)	N/A	\$10,000	Yes
Oklahoma	\$15	\$12 (petroleum and agriculture chemicals)	\$30	\$1,000	Yes
Nebraska	\$0	\$0	\$0	\$0	Yes, but highly discouraged
Colorado	\$10	\$10 (all facilities)	\$25	\$1,000	No
Kansas	\$25-\$300 based on total amount stored	\$25 (per owner/operator for oil and gas wells)	\$25-\$150 based on total amount stored	\$450	No

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

These regulations will enhance compatibility with neighboring states, encouraging growth of Kansan businesses and local offices of businesses from other states. Changes are minor and will be extremely beneficial to the local

DOB APPROVAL STAMP
APPROVED
JAN 07 2020
DIVISION OF THE BUDGET

fire departments and LEPCs who are currently receiving hard copy reports for above ground storage tank chemicals.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

The total fee imposed on companies or individuals will not change with one exception. Approximately 1000 businesses which store petroleum fuels over the reporting threshold in above ground storage tanks, may have a slight increase in fees. The impact for 94% of approximately 1,000 facilities is estimated at \$25 per year. The elimination of a special fee structure and reporting considerations for petroleum fuel tanks is replaced by standardized similar fees in the main text of the regulations. The electronic submission system will save money on postage and paper for both businesses and KDHE.

C. Businesses that would be directly affected by the proposed rule and regulation;

In the original implementation of the federal Right-To-Know program, above and below ground retail petroleum fuel tanks were included in reports. Kansas elected to allow these tank owners to use the hardcopy forms they were already filling out for the Kansas Storage Tank program instead of filing with the Right-to-Know program. This exempted them from paying fees to the Right-to-Know program.

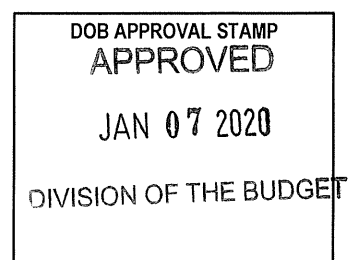
The minimum threshold planning or reporting quantity of retail petroleum fuels has since been raised to exclude most of these below ground tanks, and the facilities which operate these tanks will no longer need to report. The most directly affected businesses would be facilities which store petroleum fuel above the threshold in above ground tanks, which are now largely exempted from fees. Above ground tanks must now be reported through the Tier II database system for the Right-to-Know program, but benefits exist to balance the minimal cost as described in section D.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The adoption of current regulations will enhance the compatibility of Kansas facilities with those of nearby states, reduce the burden on local fire departments and LEPCs, and enhance the capability of the Right-to-Know program to provide critical data to local communities. Retailers with below ground petroleum fuels benefit because the majority will no longer need to report. Currently, petroleum fuel facilities are required to file a form with the KDHE Bureau of Environmental Remediation Storage Tanks Section. This form is then sent to local fire departments and LEPCs in hard copy. By including those registrants in with the current right-to-know program, there is greater accessibility to the data through the existing online portal, and less of a chance of hard copies being lost. Having the data all in one place make it easier to navigate and inform personnel as necessary. There is no increased cost for most participants and minimal (\$25) increased costs for large above ground fuel tanks.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

There are no cost increases from this regulation for a majority of registered facilities. Costs for above ground fuel tanks may increase, as they are no longer exempt from fees.



- F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$26,300

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$26,300 / year

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

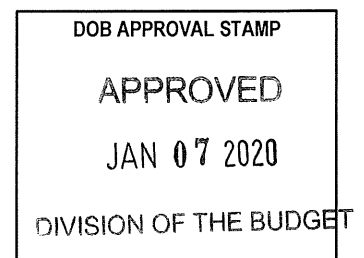
Give a detailed statement of the data and methodology used in estimating the above cost estimate.

These regulations do not raise fees. Therefore, there is no significant increased cost to calculate. Removing the fee exemption for petroleum fuel tanks should not affect the majority of businesses that the Right-to-Know program regulates. Those affected are projected to have only minimal increases. The impact for 94% of approximately 1,000 facilities is estimated at \$25 per year. Forty-five facilities are estimated to be impacted at \$50 per year, and twelve at \$150 per year. This is a very liberal estimate and the actual cost is likely to be lower. Estimates were made through a manual review of current registrants for above ground tank capacity. This is an overestimation, as some facilities already have other chemicals stored and would only be shifting from one fee bracket to another, reducing the overall estimate.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the



state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The proposed amended regulations do not change the revenues of cities, counties or school districts and do not impose functions or responsibilities to increase expenditures. Cities sometimes report information voluntarily, but they are exempt from paying fees. LEPCs, fire departments, and other local emergency personnel would save time and expense by no longer needing to retain hard copies of Tier II information and perform any data entry activities to transfer the hardcopy data into electronic format. However, when the notice of hearing for these regulations is published in the *Kansas Register*, standard agency procedure will be followed, and the three organizations will be contacted electronically for comment with attached copies of the regulations, economic impact statement and published notice of hearing.

H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The agency posted an Information Notice on the KDHE/Right-to-Know Program website, informing about the proposed regulation. The Information Notice referenced the contact information to submit comments or questions and that there will be a notification of a public hearing when it is scheduled. Additionally, an e-mail with the Information Notice and draft regulations has been sent to all current users of the Tier II reporting system, LEPCs, local emergency managers, and stakeholder associations. .

I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

If not adopted, Kansas will be out of compatibility with federal regulations and will not be able to collect data on all required hazardous chemicals or share that information with the local stakeholders. Being incompatible with federal regulations may lead to confusion for small business owners moving to the state and establishing businesses. Training about Right-to-Know processes will also be simplified by adopting more current standards. These regulations will obviate the need for special forms and will provide a more effective and streamlined oversight process for the program.

Without these regulations, local fire departments and LEPCs will continue to use their existing hard copy reports, which will have to be stored on site and manually entered into an electronic system. The data in these reports has had no oversight to verify compliance with reporting requirements.

